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SUBJECT: FIJI APPEALS COURT RULES AGAINST BAINIMARAMA; DECLARES COUP UNLAWFUL; CALLS FOR ELECTIONS

11. (U) Summary: Fiji's Court of Appeals today ruled against interim Prime Minister and Armed Forces Commander Frank Bainimarama by overturning an October 2008 High Court judgment legitimizing his interim government (IG). Delivering its judgment just a day after closing arguments, the court declared that the dismissal of Laisenia Qarase and his government was invalid and directed President Iloilo to appoint a caretaker prime minister to advise the dissolution of parliament and make way for elections. The ruling is an embarrassment to the IG, which has frequently traded on the rhetoric that it is lawful based on the 2008 High Court ruling. The Appeals court refused an IG motion to stay its judgment but granted the IG approval to appeal to the Supreme Court. End summary.

#### Appeals Court Makes Two Declarations

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12. (U) In its ruling against the IG, the Fiji Appeals Court today made two declarations, legal statements that do not compel or enjoin the IG to take particular actions. However, the granting of the Declarations, which overrule the High Court judgments of October 2008, is a clear legal and moral victory for Qarase. The first declaration stated that the dismissal of the Qarase government and the dissolution of Fiji's parliament by armed forces commander Frank Bainimarama on December 5, 2006, were unlawful. The second stated that the president of Fiji, Ratu Josefa Iloilo, may appoint a caretaker prime minister, who is to advise on the dissolution of the parliament, making way for elections. Qarase had given assurances during the appeal that he would resign as prime minister if his appeal was upheld and call immediately for elections. The court ruling did not order the restoration of Qarase to his previous position but rather declared that the president should appoint as caretaker prime minister someone who is not a party to the case (i.e., neither Qarase nor Bainimarama). Importantly, the court gave some consolation to the IG by ruling that all of its promulgations decreed by the president over the last two years must be considered valid and binding, until a court rules otherwise or the next parliament enacts otherwise.

13. (U) The Appeals Court refused the application of the IG's lawyer for a stay on the declarations, ruling that it was not appropriate to grant a stay, since the order is only declaratory and not compelling any particular action. The IG's initial reaction was that it would need to study the judgment and would not vacate any ministries as yet, as to do so would leave a governance vacuum. Qarase told the media outside the courtroom that he was delighted with the ruling and now awaits the president's next move, as recommended by the Appeals Court.

14. (SBU) Observers expected the court to rule in the IG's favor, since all three judges were appointed only this year by Iloilo. There are now rumours in Suva that the military will abrogate Fiji's constitution and impose martial law, given the impact this appeal ruling would have on the IG's plans for electoral reform contained in its People's Charter, which is being implemented through all government ministries.

Comment

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15. (U) At the time of the Appeals Court ruling, Bainimarama was in the middle of a meeting of political party leaders, which had been billed as a dialogue but from which he had at the eleventh hour excluded the representatives of all major opposition parties. Caught out by this ruling in the full bloom of his arrogance, Bainimarama is apt to react strongly and perhaps rashly. Initial statements from the interim attorney general suggest that the IG had not planned very seriously for the contingency of such a ruling and is scrambling to formulate its next move.

PRUETT